

# WIRELESS TELECOMMUNICATIONS FACILITIES ORDINANCE

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## Section 1. Title

This Ordinance shall be known and cited as the "Wireless Telecommunications Facilities Siting Ordinance" of [municipality], Maine, (hereinafter referred to as the "ordinance").

*The **Title** section can be eliminated if this ordinance is incorporated into an existing Site Plan or other Land Use Ordinance. Brackets indicate where the municipality should insert its name.*

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## Section 2. Authority

This ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution; the provisions of Title 30-A M.R.S.A. Section 3001 (Home Rule), and the provisions of the Planning and Land Use Regulation Act, Title 30-A M.R.S.A. Section 4312 *et seq.*

*The **Authority** section is needed to describe how the municipality derives its power from the State to adopt ordinances. It can be deleted if this ordinance is made part of an existing ordinance that already has this provision.*

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## Section 3. Purpose

The purpose of this ordinance is to provide a process and a set of standards for the construction of wireless telecommunications facilities in order to:

Implement a municipal policy concerning the provision of wireless telecommunications services, and the siting of their facilities;

Establish clear guidelines, standards and time frames for the exercise of municipal authority to regulate wireless telecommunications facilities;

Allow competition in telecommunications service;

*The **Purpose** section gives the reasons for the ordinance. Municipalities are not required to have this section, but it helps municipal officials and courts interpret the ordinance. This section establishes the community benefits for regulating these facilities. Users should be careful to tailor this section to their needs, **and the community needs should be based on documented facts, such as a scenic inventory.** See the **Definitions** section for the term "wireless telecommunications facilities."*

*As discussed more fully in the literature accompanying this model ordinance, the Wireless Telecommunications Act of 1996 opened the industry up to wide competition. With respect to local land use control, the Act provides as follows:*

- *The Act prohibits municipalities from banning these facilities within the municipality;*

Encourage the provision of advanced telecommunications services to the largest number of businesses, institutions and residents of [municipality];

Permit and manage reasonable access to the public rights of way of [municipality] for telecommunications purposes on a competitively neutral basis;

Ensure that all telecommunications carriers providing facilities or services within [municipality] comply with the ordinances of [municipality];

Ensure that [municipality] can continue to fairly and responsibly protect the public health, safety and welfare;

Encourage the collocation of wireless telecommunications facilities , thus helping to minimize adverse visual impacts on the community;

Enable [municipality] to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development;

Further the goals and policies of the comprehensive plan, while promoting orderly development of the town with minimal impacts on existing uses; and

Protect the scenic and visual character of the community.

- *The Act prohibits municipalities from effectively prohibiting them, (much like Maine state law concerning mobile home parks);*
- *The Act permits municipalities to limit the location and number of facilities, provided all functionally equivalent carriers are treated equally;*
- *The Act requires municipalities to make their decisions in writing and based on substantial evidence the Act requires that municipal decisions must be made within a reasonable period of time.*

*The Applicability section describes the activities that are regulated under this ordinance. This model applies to all wireless telecommunication facilities, but a municipality can limit the application to address fewer facilities.*

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## Section 4. Applicability

This local land use ordinance applies to all construction and expansion of wireless telecommunications facilities, except as provided in section 4.1.

### 4.1. Exemptions

The following are exempt from the provisions of this ordinance:

**A.) Emergency Wireless Telecommunications Facility.** Temporary wireless communication facilities for emergency communications by public officials.

**B.) Amateur (ham) radio stations.** Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).

**C.) Parabolic antenna.** Parabolic Antennas less than seven (7) feet in diameter, that are an accessory use of the property.

**D.) Maintenance or repair.** Maintenance, repair or reconstruction of a wireless telecommunications facility and related equipment, provided that there is no change in the height or any other dimension of the facility.

*The Exemptions section describes the activities that will not be reviewed under this ordinance. Municipalities should determine whether other ordinances apply to these facilities, and decide whether similar exemptions should be given to these facilities in those ordinances.*

*This model ordinance exempts emergency communications facilities used by public officials only. Municipalities should consider exempting similar facilities used by private interests.*

*The Federal Telecommunications Act exempts amateur “ham” radio stations. This model exempts other facilities for ease of administration. See **Definitions** section for “FCC”.*

*Parabolic antennas (i.e.. satellite dishes) are exempt because they are commonly accessory residential uses, so the numerous reviews might be burdensome on both the property owner and the municipality.*

*Maintenance and repair are exempt if they don’t alter the size of the facility, because these activities usually don’t change the impact of the facility on the community. This model also exempts reconstruction of facilities, but municipalities should consider whether certain reconstruction projects should be reviewed in order to bring nonconforming uses into compliance and to promote colocation existing facilities. See **Definitions** section for “height.”*

*The exemption for temporary facilities allows “COWs” (cellular on wheels) to be erected for initial market coverage while the permanent facility is established. This exemption also allows short term facilities for media or events. The municipality should determine a maximum time period based on the needs of the service providers in the community. This model ordinance exempts accessory antennas for residences only. Municipalities should consider whether to grant a similar exemption for public service or other purposes as well.*

**E.) Temporary wireless telecommunications facility.** Temporary wireless telecommunications facility, in operation for a maximum period of one hundred eighty (180) days.

**F.) Antennas as Accessory Uses.** An antenna that is an accessory use to a residential dwelling unit.

*The **Review and Approval Authority** section sets out the approval requirement for facilities. It also gives the CEO and Planning Board the authority to review applications and make findings.*

*This model gives preference to colocation by providing a streamlined CEO permitting process and fewer standards. Municipalities may not want to have the CEO make this decision. An alternative approach is to require all projects to be reviewed by the Planning Board, but still using the streamlined process and criteria for certain projects like colocation. See **Definitions** section for “colocation” and “expansion.”*

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## **Section 5. Review and Approval Authority**

### **5.1. Approval Required**

No person shall construct or expand a wireless telecommunication facility without approval of the Code Enforcement Officer (CEO) or the Planning Board as follows:

**A.) Expansion of an Existing Facility and Colocation.** Approval by the CEO is required for any expansion of an existing wireless telecommunications facility that increases the height of the facility by no more than 20 feet; accessory use of an existing wireless telecommunications facility; or colocation on an existing wireless telecommunications facility.

**B.) New Construction.** Approval of the Planning Board is required for construction of a new wireless telecommunications facility; and any expansion of an existing wireless telecommunications facility that increases the height of the facility by more than 20 feet.

*The **Pre-Application Conference** allows the municipality to explain the process and standards to the applicant, and allows coordination of local, State, and federal reviews. The conference can be used to identify alternative sites to the applicant which it might not have considered, especially as far*

## 5.2 Approval Authority

In accordance with Section 5.1 above, the CEO or Planning Board shall review applications for wireless telecommunications facilities, and make written findings on whether the proposed facility complies with this Ordinance.

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## Section 6. Approval Process

### 6.1. Pre-Application Conference

All persons seeking approval of the CEO or the Planning Board under this ordinance shall meet with the CEO no less than thirty (30) days before filing an application. At this meeting, the CEO shall explain to the applicant the ordinance provisions, as well as application forms and submissions that will be required under this ordinance.

### 6.2. Application

All persons seeking approval of the CEO or the Planning Board under this ordinance shall submit an application as provided below. The CEO shall be responsible for ensuring that notice of the application has been published in a newspaper of general circulation in the community.

**A.) Application for CEO Approval.** Applications for permit approval by the CEO must include the following materials and information:

I.) Documentation of the applicant's right, title, or interest in the property where the facility is to be

*as the possible visual impacts are concerned. Applicants and CEOs are cautioned that this pre-application conference is to determine what the submission materials will be, not to discuss the merits of those materials as they may satisfy local concerns regarding the visual impacts of the proposed development.*

*Municipalities with planners on staff may want to require applicants to meet with the Planner first, instead of the CEO or Planning Board. Likewise, the applicant may want to have a pre-application meeting with the Planning Board in a workshop forum before investing a great deal of time and money in system buildout to identify significant issues.*

*The **Application** needs to require enough information for the CEO or the Planning Board to determine whether the proposed facility meets the standards described in the next section. This model ordinance allows the CEO to establish the form of the application. Municipalities may want to adopt a form specifically for the CEO application. The CEO Application is shorter than the Planning Board Application because the former is not required to review a project with the same level of scrutiny as the Planning Board.*

*This information helps ensure that the applicant meets the standard for having a legal interest in the property. For a nonowner of the site, the legal interest may include a lease, easement or option to purchase the property.*

*The FCC regulates wireless telecommunications facilities, and requires license holders to complete a review of the facility under the National Environmental Protection Act (NEPA) and the National Historic Preservation Act (NHPA). These reviews assure that, in addition to review of impacts upon historic sites and structures, all Radio Frequency (RF) Emissions issues have been addressed at the federal level, an issue which the federal Telecommunications Act specifically exempts from municipal review.*

sited, including name and address of the property owner and the applicant.

2.) A copy of the FCC license for the facility or a signed statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.

3.) Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).

4.) Location map and elevation drawings of the proposed facility and any other proposed structures, showing color, and identifying structural materials.

5.) For proposed expansion of a facility, a signed statement that commits the owner of the facility, and his or her successors in interest, to:

a.) respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;

b.) negotiate in good faith for shared use by third parties;

*The NEPA review includes analysis of impacts on the natural environment and historic places. This application requirement seeks to ensure that the NEPA review is performed prior to, or at the same time, as the submission of the application. Impacts on historic districts or structures are assessed by either the local Historical Society or the Maine Historic Preservation Commission. See the Appendix for more information on this review. See **Definitions** section for "Historic." If this review is already required under the provisions of another ordinance, this requirement could be deleted.*

*This information helps the reviewing authority determine whether the application meets the standards for Height, Color, Materials, and Visual Impacts.*

*This requirement corresponds to the standard conditions of approval. The commitment helps the municipality encourage colocation of facilities in the future.*

*The municipality must decide whether applications are to be submitted to the CEO or the municipal planner.*

c.) allow shared use if an applicant agrees in writing to pay reasonable charges for colocation;

d.) require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adopting the tower or equipment to accommodate a shared user without causing electromagnetic interference.

**B.) Application for Planning Board Approval.** An application for approval by the Planning Board must be submitted to the Code Enforcement Officer. The application must include the following information:

1.) Documentation of the applicant's right, title, or interest in the property on which the facility is to be sited, including name and address of the property owner and the applicant.

2.) A copy of the FCC license for the facility, or a signed statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.

3.) A USGS 7.5 minute topographic map showing the location of all structures and wireless telecommunications facilities above 150 feet in

*This information helps the Planning Board determine whether the application meets the standard for having adequate right, title or interest in the property. For a nonowner of the site, the legal interest may include a lease, easement or purchase option.*

*This information helps the Planning Board determine that the applicant meets FCC standards for radio frequency emissions, financial capability, and the right to develop their "build-out" capability.*

*This information helps the Planning Board decide whether the application meets this standard for location. By identifying all structures and facilities above 150 feet, new opportunities for colocation may be discovered. Exempting rooftop antennas from mapping eliminates undue hardship on the applicant. Municipalities may also want to adjust the height requirement to suit local conditions. These issues can be discussed during the pre-application conference.*

*The site plan helps the Planning Board understand the impacts of the facility on abutting properties. It also helps the Planning Board decide whether the application meets the standards for setbacks and structural integrity.*

height above ground level, except antennas located on roof tops, within a five (5) mile radius of the proposed facility, unless this information has been previously made available to the municipality. This requirement may be met by submitting current information (within thirty days of the date the application is filed) from the FCC Tower Registration Database.

**4.) A site plan:**

**a.)** prepared and certified by a professional engineer registered in Maine indicating the location, type, and height of the proposed facility, antenna capacity, on-site and abutting off-site land uses, means of access, setbacks from property lines, and all applicable American National Standards Institute (ANSI) technical and structural codes;

**b.)** certification by the applicant that the proposed facility complies with all FCC standards for radio emissions is required; and

**c.)** a boundary survey for the project performed by a land surveyor licensed by the State of Maine.

**5.) A scenic assessment, consisting of the following:**

**a.)** Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level;

*One of the major concerns with these facilities is their aesthetic impact on the community. This information helps the Planning Board decide whether the application meets the standards for color, materials, landscaping, and lighting to address this concern. "Stealth" or camouflaging techniques can be used to make antennas less obtrusive, though they have not yet been used in Maine.*

*Photo simulations provide the Planning Board with information to decide whether the application meets the standard for color, materials, and visual impact. This information can also be used for determining compliance with a visual impact standard, if adopted by a municipality (See Appendix).*

*Photo simulations, as part of the application, should be relied upon by the Planning Board based on their:*

- Representativeness, in that the simulation represents important and typical views of the project;*
- Accuracy, in that the similarity between the simulation and the reality will be easily recognizable to the average citizen;*

b.) A landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees, and other significant site features; the type and location of plants proposed to screen the facility; the method of fencing, the color of the structure, and the proposed lighting method.

c.) Photo simulations of the proposed facility taken from perspectives determined by the Planning Board, or their designee, during the pre-application conference. Each photo must be labeled with the line of sight, elevation, and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.

- *Visual clarity, in that the details, parts, and overall contents shall be clearly recognizable;*
- *Legitimacy, in that the simulation is defensible as to the veracity of its attempts to reproduce reality.*

*The narrative provides the municipality with important information about the overall coverage requirements necessary to meet the applicant's "build-out" over the long term. Specifically, it helps the Planning Board decide whether the standard for location has been met, and the reasons why colocation is not feasible. See additional information included in the appendix, specifically the FCC Fact Sheets.*

*For Maine communities, the first step is to assess whether there are visual impacts as a result of the proposed facility. The **Visual Impact Standards** (below) set out the parameters by which the Planning Board will review the project's potential visual impacts. The first review criteria has to do with whether a scenic resource (as identified in the adopted comprehensive plan) would be affected. If the resource has not been identified in the plan, then the town's ability to regulate based on impacts to this resource may be severely limited. The **Appendix** contains more detailed information regarding this issue.*

*This evidence of existing facility review is used by the Planning Board to determine whether the facility meets the priority location standard. This requirement seeks to compel the applicant to look for a location that meets the municipal preferences.*

*This structural strength evidence will help provide documentation of the Board's decision. See **Definitions** section for "**targeted market coverage area**."*

**d.)** A narrative discussing:

**i.)** the extent to which the proposed facility would be visible from or within a designated scenic resource,

**ii.)** the tree line elevation of vegetation within 100 feet of the facility, and

**iii.)** the distance to the proposed facility from the designated scenic resource's noted viewpoints.

**6.)** A written description of how the proposed facility fits into the applicant's telecommunications network. This submission requirement does not require disclosure of confidential business information.

**7.)** Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following:

**a.)** Evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicant's engineering requirements,

**b.)** Evidence that existing facilities do not have sufficient height or cannot be increased in height

at a reasonable cost to meet the applicant's engineering requirements,

**c.)** Evidence that existing facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment. Specifically:

**i.)** Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.

**ii.)** The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment on the existing facility would cause interference with the applicant's proposed antenna.

**iii.)** Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.

**d.)** For facilities existing prior to the effective date of this ordinance, the fees, costs, or contractual provisions required by the owner in order to share or adapt an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are

*This requirement corresponds to the Standard Condition of Approval. The signed statement from the owner helps the municipality encourage colocation of facilities in the future. Using this requirement in conjunction with the design standards, the municipality can ensure that colocation remains a viable option.*

presumed to be unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this ordinance;

e.) Evidence that the applicant has made diligent good faith efforts to negotiate colocation on an existing facility, building, or structure, and has been denied access;

8.) Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).

9.) A signed statement stating that the owner of the wireless telecommunications facility and his or her successors and assigns agree to:

a.) respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;

b.) negotiate in good faith for shared use of the wireless telecommunications facility by third parties;

c.) allow shared use of the wireless telecommunications facility if an applicant agrees

*The surety establishes the financial capability of the applicant to remove an abandoned facility (see Abandonment section below).*

in writing to pay reasonable charges for colocation;

d.) require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the useful life span of the facility.

12.) A form of surety approved by the Planning Board to pay for the costs of removing the facility if it is abandoned.

13.) Evidence that a notice of the application has been published in a local newspaper of general circulation in the community.

### 6.3. Submission Waiver

The CEO or Planning Board, as appropriate, may waive any of the submission requirements based upon a written request of the applicant submitted at the time of application. A waiver of any submission requirement may be granted only if the CEO or Planning Board finds in

*The **Application Fee** should not be included with the **Review Fee**. The application fee covers administrative costs which may be different for CEO review and Planning Board review.*

*The **Review Fee** covers the costs of consultants to help the municipality to review the application. The need for an outside consultant is the Planning Board's choice, based on some established practice. The consultation fees must be "reasonable and customary" for the community, and the municipality is urged to check the consultant's references. Municipalities can create an escrow account for this purpose, and any balance must be returned to the applicant. The "Model Subdivision Regulations" Article 13 Performance Guarantees may serve as a good model for various fee structures.*

writing that due to special circumstances of the application, the information is not required to determine compliance with the standards of this Ordinance.

*The Notice of Complete Application starts the clock for the review process.*

#### **6.4. Fees**

##### **A.) CEO Application Fee**

An application for CEO approval shall include payment of an application fee of \$\_\_\_\_\_. The application shall not be considered complete until this fee is paid. The applicant is entitled to a refund of the application fee if the application is withdrawn within fifteen (15) days of date of filing, less all expenses incurred by the [municipality] to review the application.

*Where there are Planning Departments, or where the Municipal Engineer has responsibility for review of these types of applications, copies of the application should be forwarded to them.*

##### **B.) Planning Board Application Fee**

An application for Planning Board approval shall include payment of an application fee of \$\_\_\_\_\_. The application shall not be considered complete until this fee is paid. An applicant is entitled to a refund of the application portion of fee if the application is withdrawn within fifteen (15) days of date of filing, less all expenses incurred by the [municipality] to review the application.

*The municipality might wish to develop a **standard form** just for these uses to be used for abutter notification.*

##### **C. Planning Board Review Fee**

An applicant for approval by the Planning Board shall pay all reasonable and customary fees incurred by the municipality that are necessary to review the application. The review fee shall be paid in full prior to the start of construction.

That portion of the review fee not used shall be returned to the applicant within fourteen (14) days of the Planning Board's decision.

*This model ordinance provides for a mandatory **public hearing**, but this is not required under State law. A municipality may give the Planning Board discretion to decide whether to hold a hearing.*

### **6.5. Notice of Complete Application**

Upon receipt of an application, the CEO shall provide the applicant with a dated receipt. Within five (5) working days of receipt of an application the CEO shall review the application and determine if the application meets the submission requirements. The CEO or Planing Board, as appropriate, shall review any requests for a waiver from the submission requirements and shall act on these requests prior to determining the completeness of the application.

*This **CEO Approval** is for use in municipalities which allow their Code Officers to make findings and approve applications. Where this is not the case, this section should be struck. Remember, however, that the point of having the CEO review and approve applications is to further the goal of encouraging colocation.*

If the application is complete, the CEO shall notify the applicant in writing of this determination and require the applicant to provide a sufficient number of copies of the application to the [Planning Board, Planning Office, Code Enforcement Office, Engineering Department, Police Department, and Fire Department].

*This requirement protects both parties' interests in that it begins the time period for appeal of the municipal decision.*

If the application is incomplete, the CEO shall notify the applicant in writing, specifying the additional materials or information required to complete the application.

If the application is deemed to be complete, and requires Planning Board review, the CEO shall notify all abutters to the site as shown on the Assessor's records, by first-class mail, that an application has been accepted. This notice shall contain a brief description of the proposed activity and the name of the applicant, give the location of a copy of the application available

for inspection, and provide the date, time, and place of the Planning Board meeting at which the application will be considered. Failure on the part of any abutter to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project.

#### **6.6. Public Hearing**

For applications for Planning Board approval under Section 5.1(B), a public hearing shall be held within 30 days of the notice of the complete application.

#### **6.7. Approval**

**A.) CEO Approval.** Within thirty (30) days of receiving a complete application for approval under section 5.1(A), the CEO shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. The CEO shall approve the application if the CEO finds that the application complies with the provisions in Section 7.1 of this ordinance.

The CEO shall notify all abutters of the decision to issue a permit under this section. The time period may be extended upon agreement between the applicant and the CEO.

**B.) Planning Board Approval.** Within ninety (90) days of receiving a complete application for approval under section 5.1(B), the Planning Board shall approve, approve with conditions, or deny the application in writing, together with the findings on which that

*Note the definition of **unreasonable adverse impact** below, in the **Definitions** section.*

decision is based. However, if the Planning Board has a waiting list of applications that would prevent the Planning Board from making a decision within the required ninety (90) day time period, then a decision on the application shall be issued within sixty (60) days of the public hearing, if necessary, or within 60 days of the completed Planning Board review. This time period may be extended upon agreement between the applicant and the Planning Board.

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## **Section 7. Standards of Review**

To obtain approval from the CEO or the Planning Board, an application must comply with the standards in this section.

### **7.1. CEO Approval Standards**

An application for approval by the CEO under Section 5.1(A) must meet the following standards.

- A.)** The proposed facility is an expansion, accessory use, or colocation to a structure existing at the time the application is submitted.
- B.)** The applicant has sufficient right, title, or interest to locate the proposed facility on the existing structure.
- C.)** The proposed facility increases the height of the existing structure by no more than twenty (20) feet.
- D.)** The proposed facility will be constructed with materials and colors that match or blend with the

*The **Priority of Locations** standard sets out a preference for colocation over new facilities. The applicant is required to show that colocation is not feasible before the Planning Board will approve new construction. An alternative approach is to designate areas where these facilities are permitted.*

*It is important to review the discussion below on “Visual Impacts” to help understand the value that this prioritization provides to the overall review and approval process.*

*The municipality may wish to contract the services of a qualified consultant to review all sites that would serve within the carrier’s “target coverage area.” However, this review must be careful not to produce the effect of “effectively prohibiting the provision of service,” as counter to the federal act.*

*The municipality must establish standards for use on public property.*

*If colocation in any district is a higher priority for the community, then a facility’s location in a Residential district would raise that district’s priority. Likewise, the municipality may change the order of priorities, but must remain careful not to effectively exclude all carriers from all locations.*

***In addition, location and height** (see Section 7.2(D) below) must be considered together so that the Planning Board doesn’t discriminate against an equivalent provider. Beyond that, there are a myriad of choices a municipality may use to meet its own particular goals, be they for more numerous, shorter facilities, or taller and fewer ones.*

surrounding natural or built environment, to the maximum extent practicable.

**E.)** The proposed facility, to the greatest degree practicable, shall have no unreasonable adverse impact upon districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).

## **7.2. Planning Board Approval Standards**

An application for approval by the Planning Board under Section 5.1(B) must meet the following standards.

**A.) Priority of Locations.** New wireless telecommunications facilities must be located according to the priorities below. The applicant shall demonstrate that a facility of a higher priority cannot reasonably accommodate the applicant's proposed facility.

**1.)** Colocation on an existing wireless telecommunications facility or other existing structure in the following districts, as identified in the [name of municipality] Zoning Ordinance:

**2.)** A new facility on public or private property in an Industrial District, or permitted as an Industrial Use.

*If a community wants to limit the height of facilities, being careful not to effectively prohibit them, then the "carrot" must be the ease of colocation. Like a large umbrella, the higher the tower, the larger the sphere of coverage, and the fewer number of towers required for the first two phases of build-out - coverage and intermediate (see the Appendix).*

*Another critical element for determining the number of facilities is population density. The industry is market driven, and that market is primarily driven by population densities. The greater the densities, ultimately the greater the number of antennas. If there are not suitable colocation opportunities, then there will be more facilities (a.k.a., tower).*

*If a community wants to require colocation, then leeway must be left for either building a larger tower first, or being able to expand on that tower as a colocator. Communities which are flexible but clear have been the winners - towers located where they are least obtrusive, or located where the public eye must find them among the din of everyday life - telephone poles and lines, industrial fixtures, etc. In order for colocation to work, it must be the easiest path, with the least resistance for the carrier. If the town wants only the minimum intrusion, then one tall, well placed tower with plenty of colocation options may be the best route.*

*An alternative **Location** standard designates areas where facilities may be constructed. This is useful if the community wants to create "tower farms" in appropriate locations. This approach must be carefully considered so that it does not exclude or discriminate against service providers, in violation of the federal Telecommunications Act. Towers are often permitted in Business, Commercial, and Industrial Districts, and municipalities with significant residential districts should consider some accommodations to wireless facilities to allow for*

3.) A new facility on public or private property in a Commercial District, or permitted as a Commercial Use.

4.) A new facility on public or private property in a Rural District, or permitted as a Rural Use.

5.) A new facility on public or private property in a Residential District, or permitted as an Residential Use.

*coverage of the residential area, taking local topography into account.*

*The **Siting on Municipal Property** standard is intended to protect the public interest in public property. The use of public property must be carefully considered because the mandatory use of public property can violate federal antitrust laws. If a municipality wants to simply encourage siting on public property, options include free siting of municipal police antennas, sources of income for schools, and marketing options for teacher and municipal employees.*

*The municipality should establish standards for siting these facilities on public property. One example are the standards used by the National Park Service, which requires that the siting will meet the policies of the department or agency. In this situation, that may mean placement of a facility in a public park is less appropriate than placement in a municipal industrial park.*

**[OR]**

**A.) Location**

New wireless telecommunications facilities may be permitted only in the following districts as designated in the [municipal] zoning ordinance:

[list districts here]

*The municipality may change the order of location priorities to suit its own needs, but it must understand the risks, as well as the opportunities, to locating these facilities exclusively on public property without due process, which could run counter to federal antitrust laws.*

*If these standards are going to be incorporated into an existing zoning ordinance, the description of districts should correlate to the districts listed in the existing ordinance.*

*The **Height** standard should be considered carefully because height restrictions can effectively exclude facilities, and thus the provision of service, especially if there are restrictions on the location of facilities as well. In planning the acceptable locations of facilities, the town needs to consider the interplay between height and coverage. Again, the taller the facility, the wider range of coverage. The stronger the facility, the more colocation opportunities develop. The shorter the towers, the greater number may be necessary for market coverage. The Appendix provides more information on these planning considerations. The average freestanding monopole is 180-195 feet tall.*

*An **alternative** height standard sets different height limits in different districts, which can help direct or concentrate larger facilities to certain areas.*

*Limiting height to 195 feet eliminates the need in most cases for lighting and marking, as required by the FCC. The difference in height between the two could mean an additional opportunity for colocation. However, for scenic issues, towns could allow taller towers in more desirable places, thus maximizing colocation possibilities.*

**B.) Siting on Municipal Property.** If an applicant proposes to locate a new wireless telecommunications facility, or expand an existing facility on municipal property, the applicant must show the following:

- 1.) The proposed location complies with applicable municipal policies and ordinances.
- 2.) The proposed facility will not interfere with the intended purpose of the property.
- 3.) The applicant has adequate liability insurance and a lease agreement with the municipality that includes reasonable compensation for the use of the

***Setbacks** protect abutting property owners from the unlikely event that the use will physically impact the property; and from indirect impacts, such as obstruction of air or light. The intent is to protect abutting properties from the unlikely structural failure of the facility through wind loading, resulting in the structure toppling over. Coupling setbacks with design and engineering*

property and other provisions to safeguard the public rights and interests in the property.

*standards will ensure the safest structure possible is constructed.*

**[IMPORTANT NOTE: The working group, made up of industry and municipal representatives, could not reach consensus on the following subsection. Municipalities are strongly recommended to work with applicants in determining effective and appropriate colocation design requirements during the pre-application, design, and Planning Board workshop phases.]**

*This ordinance allows the Planning Board to alter the setback, but establishes predictability that the setback will not be below a baseline threshold. Using an easement or other notice of waiver from the strict interpretation of the 105% setback helps both the municipality and applicant find sites that will have the least visual impact. It is crucial that the municipality remember that without first identifying those key visual vistas and features, regulating these facilities based on their visual impacts is problematic at best.*

**C.) Design for Colocation.** A new wireless telecommunications facility and related equipment must be designed and constructed to accommodate expansion for future colocation of at least three additional wireless telecommunications facilities or providers. However, the Planning Board may waive or modify this standard where the district height limitation effectively prevents future colocation.

*If adopted as a separate ordinance, care should be taken to properly refer to the districts as designated in the zoning ordinance.*

**D.) Height.** A new wireless telecommunications facility must be no more than \_\_\_ feet in height.

*The **Landscaping** standard is intended to protect the interests of abutting land owners and the general public that will view the facility.*

**[OR]**

*The **Fencing** standard is intended to protect the facility and the public from harm by trespassers.*

**D.) Height.** A new wireless telecommunications facilities must meet the following height standards, in the following districts:

*The **Lighting** standard is intended to minimize the off-site impacts of facility lighting while protecting the public. Options include: limiting the height and location of the facility to avoid the requirement by the FAA that the facility be lighted, and the Planning Board may wish to provide options in the **Submissions** section as well. Remember, however, that the alternatives proposed may be preempted by the FAA.*

**I.)** In any Manufacturing or Industrial District the maximum height for a wireless telecommunications facility shall be \_\_\_ feet.

2.) In any Rural District the maximum height for a wireless telecommunications facility shall be \_\_\_\_ feet, or sufficiently above tree line to minimize interference.

*The **Color and Materials** standard is intended to protect the interest of the public that will view the facility. Some communities have required unlit facilities to be painted neutral or “dull” colors (gray, e.g.) to minimize their physical presence.*

3.) In any Commercial District the maximum height for a wireless telecommunications facility shall be \_\_\_\_ feet.

4.) In any Neighborhood Business/Commercial District the maximum height for a wireless telecommunications facility shall be \_\_\_\_ feet.

*The **Structural** standard is intended to minimize the possibility of collapse. In fact, when constructed to these standards, there is little likelihood that these structures will topple over like a tree. Typically, as seen in Quebec this winter, they topple down upon themselves. The goal of this standard is to minimize off-site impacts, while allowing reasonable use and repairs to occur, especially during emergencies. Rather than become structural engineers, the Planning Board may simply seek to have an engineer certify that the structure meets these standards.*

5.) Residential District. In any Residential District the maximum height for a wireless telecommunications facility shall be \_\_\_\_ feet.

**E.) Setbacks.** A new or expanded wireless telecommunications facility must comply with the setback requirements for the zoning district in which it is located, or be set back one hundred five percent (105%) of its height from all property lines, whichever is greater. The setback may be satisfied by including the areas outside the property boundaries if secured by an easement. The following exemptions apply:

*If a town wishes to address or regulate this use, or any other use with this kind of impact, then the municipal reviewers must have relevant submission requirements, and defensible review standards to define and assess that impact. The version presented here is one example; there are others.*

1.) In \_\_\_\_\_ districts, the setback may be reduced by the Planning Board upon a showing by the applicant that the facility is designed to collapse in a manner that will not harm other property.

*Applicants, Planning Boards, and Planners must recognize that visual impacts are unavoidable, since these facilities (structures and antennas) are technologically required to be at a certain height and in certain locations to achieve minimal target area coverage. Further, the higher PCS frequencies, what are known as “line-of-sight” frequencies, do not bend around obstacles such as buildings, trees, etc., and therefore have much less flexible siting needs than traditional cellular and pager antennas, transmitters, etc.*

2.) An antenna is exempt from the setback requirement if it extends no more than five (5) feet

horizontally from the edge of the structure to which it is attached, and it does not encroach upon an abutting property.

**F.) Landscaping.** A new wireless telecommunications facility and related equipment must be screened with plants from view by abutting properties, to the maximum extent practicable. Existing plants and natural land forms on the site shall also be preserved to the maximum extent practicable.

**G.) Fencing.** A new wireless telecommunications facility must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.

**H.) Lighting.** A new wireless telecommunications facility must be illuminated only as necessary to comply with FAA or other applicable state and federal requirements. However, security lighting may be used as long as it is shielded to be down-directional to retain light within the boundaries of the site, to the maximum extent practicable.

**I.) Color and Materials.** A new wireless telecommunications facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Unless otherwise

*These **Noise** standards may be deleted, or if the municipality has an existing noise ordinance, this exemption should be included.*

required, muted colors, earth tones, and subdued hues shall be used.

**J.) Structural Standards. [Evidence that]** A new wireless telecommunications facility must comply with the current Electronic Industries Association/ Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."

**K.) Visual Impact.** The proposed wireless telecommunications facility will have no unreasonable adverse impact upon designated scenic resources within the Town, as identified either in the municipally adopted comprehensive plan, or by a State or federal agency.

**I.)** In determining the potential unreasonable adverse impact of the proposed facility upon the designated scenic resources, the Planning Board shall consider the following factors:

**a.)** The extent to which the proposed wireless telecommunications facility is visible above tree line, from the viewpoint(s) of the impacted designated scenic resource;

**b.)** the type, number, height, and proximity of existing structures and features, and background features within the same line of sight as the proposed facility;

c.) the extent to which the proposed wireless telecommunications facility would be visible from the viewpoint(s);

d.) the amount of vegetative screening;

e.) the distance of the proposed facility from the viewpoint and the facility's location within the designated scenic resource; and

f.) the presence of reasonable alternatives that allow the facility to function consistently with its purpose.

**L.) Noise.** During construction, repair, or replacement, operation of a back-up power generator at any time during a power failure, and testing of a back-up generator between 8 a.m. and 9 p.m. is exempt from existing municipal noise standards.

**M.) Historic & Archaeological Properties.** The proposed facility, to the greatest degree practicable, will have no unreasonable adverse impact upon a historic district, site or structure which is currently listed on or eligible for listing on the National Register of Historic Places.

### 7.3 Standard Conditions of Approval

The following standard conditions of approval shall be a part of any approval or conditional approval issued by the CEO or Planning Board. Where necessary to ensure that an approved

*The **Amendment** section provides for the same review for amendments as original applications. As an alternative, municipalities may want to provide for a different procedure.*

*The **Abandonment** section authorizes the CEO to remove unused facilities at the owners expense. The town must decide how much of the facility must be removed, and the depth to which the original site must be restored. This requirement can be made part of the lease agreement, and the applicant must demonstrate that there is sufficient bonding for this to occur. **It is strongly advised that a public hearing be held prior to the revocation of the permit.***

*The reclamation should address the visual impacts as well. The Town should decide whether pre-construction shall consider the area below grade.*

project meets the criteria of this ordinance, the Planning Board can impose additional conditions of approval. Reference to the conditions of approval shall be clearly noted on the final approved site plan, and shall include:

I.) The owner of the wireless telecommunications facility and his or her successors and assigns agree to:

a.) respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;

b.) negotiate in good faith for shared use of the wireless telecommunications facility by third parties;

c.) allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for colocation.

d.) require no more than a reasonable charge for shared use of the wireless telecommunications facility, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all

*The **Appeals** section makes the Board of Appeals the final decision maker. For municipalities without a Zoning Board of Appeals, the appeals by aggrieved parties must be made to the Superior Court. For municipalities incorporating these standards into an existing zoning ordinance, this section could be deleted if already present in the ordinance.*

*The **Administration and Enforcement** section gives the CEO broad authority to prosecute violations of the ordinance. Alternatively, municipalities may require prior approval of some other municipal official(s) before certain enforcement actions are taken. For municipalities incorporating these standards into an existing zoning ordinance, this section could be deleted if already present in the ordinance.*

*These municipal officers may be the CEO or the Town or City Manager, depending upon the current administrative responsibilities.*

of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the life span of the useful life of the wireless telecommunications facility.

2.) Upon request by the municipality, the applicant shall certify compliance with all applicable FCC radio frequency emissions regulations.

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**Section 8. Amendment to an Approved Application**

Any changes to an approved application must be approved by the CEO or the Planning Board, in accordance with Section 5.

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**Section 9. Abandonment**

A wireless telecommunications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The CEO shall notify the owner of an abandoned facility in writing and order the removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the CEO that the facility has not been abandoned.

If the Owner fails to show that the facility is in active operation, the owner shall have sixty (60) days to remove the facility. If the facility is not removed within this time period, the

municipality may remove the facility at the owner's expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition, including the removal of roads, and reestablishment of vegetation.

If a surety has been given to the municipality for removal of the facility, the owner of the facility may apply to the Planning Board for release of the surety when the facility and related equipment are removed to the satisfaction of the Planning Board.

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## **Section 10. Appeals**

Any person aggrieved by a decision of the CEO or the Planning Board under this ordinance may appeal the decision to the Board of Appeals, as provided by [section of Zoning or Land Use Ordinance]. Written notice of an appeal must be filed with the Board of Appeals within thirty (30) days of the decision. The notice of appeal shall clearly state the reasons for the appeal.

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## **Section 11. Administration and Enforcement**

The CEO, as appointed through either the Zoning Ordinance or by the Board of Selectmen or Town or City Council, shall enforce this ordinance. If the CEO finds that any provision of this ordinance has been violated, the CEO shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. The CEO shall order correction of the violation and may take any other legal action to ensure compliance with this ordinance.

*If these provisions are incorporated into an existing zoning ordinance, **municipalities should make sure that the existing definition is amended to include towers.***

The [Municipal Officers], or their authorized agent, are authorized to enter into administrative consent agreements for the purpose of eliminating violations of this ordinance and recovering fines without court action. Such agreements shall not allow a violation of this ordinance to continue unless: there is clear and convincing evidence that the violation occurred as a direct result of erroneous advice given by an authorized municipal official upon which the applicant reasonably relied to its detriment and there is no evidence that the owner acted in bad faith; the removal of the violation will result in a threat to public health and safety or substantial environmental damage.

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## **Section 12. Penalties**

Any person who owns or controls any building or property that violates this ordinance shall be fined in accordance with Title 30-A M.R.S.A. § 4452. Each day such violation continues after notification by the CEO shall constitute a separate offense.

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## **Section 13. Conflict and Severability**

### **13.1 Conflicts with other Ordinances**

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation, or statute, the more restrictive provision shall apply.

### **13.2 Severability**

The invalidity of any part of this ordinance shall not invalidate any other part of this ordinance.

#### **Section 14. Definitions**

The terms used in this ordinance shall have the following meanings:

"Antenna" means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

"Antenna Height" means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure, even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the facility site. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

"Colocation" means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

"Expansion" means the addition of antennas, towers, or other devices to an existing structure.

"FAA" means the Federal Aviation Administration, or its lawful successor.

"FCC" means the Federal Communications Commission, or its lawful successor.

"Height" means the vertical measurement from a point on the ground at the mean finish grade adjoining the foundation as calculated by averaging the highest and lowest finished grade around the building or structure, to the highest point of the building or structure. The highest point shall exclude farm building components, flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings.

"Historic or Archaeological Resources" means resources that are:

*Municipalities may wish to substitute the "Labor Market Area" for this definition.*

1. Listed individually in the National Register of Historic Places or eligible for listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs approved by the Secretary of the Interior;
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by Secretary of the Interior through the Maine Historic Preservation Commission; or

5. Areas identified by a governmental agency such as the Maine Historic Preservation Commission as having significant value as an historic or archaeological resource and any areas identified in the municipality's comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

"Historic District" means a geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development and identified in the municipality's comprehensive plan, which is listed or is eligible to be listed on the National Register of Historic Places. Such historic districts may also comprise individual elements separated geographically, but linked by association or history.

"Historic Landmark" means any improvement, building or structure of particular historic or architectural significance to the Town relating to its heritage, cultural, social, economic or political history, or which exemplifies historic personages or important events in local, state or national history identified in the municipality's comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

"Line of sight" means the direct view of the object from the designated scenic resource.

"Parabolic Antenna" (also known as a satellite dish antenna) means an antenna which is bowl-shaped, designed for the reception and or transmission of radio frequency communication signals in a specific directional pattern.

"Principal Use" means the use other than one which is wholly incidental or accessory to another use on the same premises.

"Public Recreational Facility" means a regionally or locally significant facility, as defined and identified either by State statute or in the municipality's adopted comprehensive plan, designed to serve the recreational needs of municipal property owners.

"Designated Scenic Resource" means that specific location, view, or corridor, as identified as a scenic resource in the municipally adopted comprehensive plan or by a State or federal agency, that consists of:

- 1.) a three dimensional area extending out from a particular viewpoint on a public way or within a public recreational area, focusing on a single object, such as a mountain, resulting in a narrow corridor, or a group of objects, such a downtown skyline or mountain range, resulting in a panoramic view corridor; or
- 2.) lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as seen from a viewpoint on a public way or within a public recreational area.

"Targeted Market Coverage Area" means the area which is targeted to be served by this proposed telecommunications facility.

"Unreasonable Adverse Impact" means that the proposed project would produce an end result which is:

- 1.) excessively out-of-character with the designated scenic resources affected, including existing buildings structures and features within the designated scenic resource, and
- 2.) would significantly diminish the scenic value of the designated scenic resource.

“Viewpoint” means that location which is identified either in the municipally adopted comprehensive plan or by a federal or State agency, and which serves as the basis for the location and determination of a particular designated scenic resource.

"Wireless Telecommunications Facility" or "Facility" means any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications service (PCS) or pager services.

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**Section 15. Effective Date**

This ordinance becomes effective on \_\_\_\_\_.